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July 25, 2000

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket No. 98-141
SBC's Request for Interpretation, Waiver, or Modification
Of the SBC/Ameritech Merger Conditions

Dear Ms. Salas:

On May 23, 2000, Jato Communications Corp. ("Jato") submitted an *ex parte* presentation describing its concerns with SBC's request for a waiver of the SBC/Ameritech Merger Conditions to deploy its "Project Pronto" remote terminals ("RTs").¹ Jato explained that grant of SBC's requested waiver could not serve the public interest unless three conditions were met: (1) SBC deployed Project Pronto as an overlay and continued to maintain and provision all-copper unbundled loops to competitors, (2) SBC made available all features, functions and capabilities supported by its Pronto architecture, including remote loop testing and committed bit rate ("CBR") class of service, and (3) SBC did not limit collocation space available in its RTs, to allow the FCC to consider more specific rules in a separate rulemaking. Responding to Jato's concerns, SBC filed a set of "voluntary commitments" on July 13, 2000 that it proposes to implement should the FCC grant its requested waiver ("SBC Proposal"). The SBC Proposal, though an improvement over its past commitments, does not provide adequate assurances on any

¹ Letter from Steven A. Augustino, counsel to Jato Communications Corporation, to Magalie R. Salas, Secretary, FCC, CC Docket No. 98-141 (May 23, 2000).

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of the three conditions necessary to ensure that competitive providers of DSL services are not disadvantaged by Project Pronto.

A. Retention of Copper Loops

SBC's Proposal is typical of its evasion on the issue of whether it will maintain unbundled copper loops that competitors may use to provide DSL services. SBC states that it has "no current plans or plans under development" to retire "mainframe terminated copper facilities"² as a result of the Project Pronto deployment. (SBC Proposal at 6). This "commitment" is immediately undercut two sentences later, however, when SBC declares that it will "continue to follow its established copper retirement policy," which according to SBC considers, among other factors, whether the copper is "underutilized" and its cost to maintain is greater than the cost of fiber. (SBC Proposal at 6-7). Moreover, SBC has been telling the investment community that Project Pronto may have a significant effect on its existing network facilities. In its 1999 10-K, SBC warned that Project Pronto would force an "ongoing assessment of the carrying value and economic useful life of [its] existing network facilities."³ In a recent "Investor Briefing" posted on its website, SBC declares that Project Pronto will result in "meaningful cost savings," spurred largely by reduced maintenance and provisioning expenses.⁴ These contradictory statements underscore the importance of obtaining a definitive, enforceable commitment from SBC to maintain copper loops for competitors such as Jato.

Implicitly recognizing the insufficiency of its stated assurances, SBC offers two additional proposals, neither of which ensure competitors will have access to copper loops when Project Pronto is deployed. First, SBC's proposed retirement cap of 5% of SBC/Ameritech's total mainframe terminated copper facilities in service does not impose any meaningful limitation on SBC's retirement of copper facilities. SBC has stated that it plans to deploy 20,000 RTs, each serving approximately 2,000 customer lines. With an installed customer base of 59.9 million access lines, SBC would be able to retire *every existing copper line* for 1,500 of its planned 20,000 RTs before it approached the 5% cap. Clearly, this would have a significant impact on CLEC's access to copper loops. Second, SBC's offer to sell to-be-retired facilities to

² SBC does not define what it means by the term "mainframe terminated copper facilities." It is not clear, therefore, that retention of "mainframe terminated copper facilities" will be sufficient to ensure competitors have access to an all-copper loop, free of load coils and other impediments, from the central office to the customer's point of demarcation. See 47 C.F.R. § 51.319(a).

³ SBC Form 10-K at 8 (filed 3/10/2000).

⁴ SBC Investor Briefing No. 215. "SBC Updates Growth Strategies," at 4 (Feb. 29, 2000); see also SBC Investor Briefing No. 211, "SBC Announces Sweeping Broadband Initiative," at 7 (Oct. 18, 1999) (stating that the capital savings of Project Pronto, including "substantially eliminat[ing] further deployment of copper facilities for feeder reinforcement," will pay for the cost of RT deployment).

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third parties is not meaningful. SBC's offer leaves unanswered a host of operational issues critical to the utility of any copper facilities to be sold, including, but not limited to, issues of RT and CO collocation for access to and use of these facilities, sub-loop unbundling, interconnection with other elements of the SBC network, and precisely how a would-be purchaser is expected to comply with pole attachment requirements, private easements and public rights of way. Put simply, SBC appears to be selling a bill of goods to unsuspecting third party purchasers.

Given the critical importance of all-copper facilities to the provision of SDSL and other non-ADSL services, the Commission must attach a specific, enforceable condition to maintain copper facilities. The Commission should require that before SBC deploys an RT to a specific location it state, via public posting, whether it proposes to remove or retire any copper facilities serving customers in the area to be served by the RT, and the schedule on which it proposes to remove or retire such facilities. If SBC proposes to remove or retire any copper facilities, it should be required to apply to the Commission for prior approval, and must include a detailed proposal for how competitors will obtain unbundled access to customers for the provision of advanced services if the request is approved.⁵ In addition, SBC should be prohibited, for the duration that its advanced services affiliate operates, from removing or retiring copper facilities serving more than 3% of the access lines targeted for Project Pronto deployment.

B. Access to Features, Functions and Capabilities of Equipment Installed in RTs

As Jato explained in its May 23rd *ex parte*, in some instances Jato could be a potential customer of a Broadband UNE made possible by the equipment installed in SBC's RTs. If this method is to be used to serve customers, Jato and other competitive providers must have the ability to configure their services as necessary to satisfy their customers' needs, including the ability to offer all technically feasible transmission speeds, and the ability to specify any quality of service class such as constant bit rate, real time and non-real time variable bit rate, and "available bit rate" PVCs. SBC's offer to provide CBR quality of service, however, is so limited by other factors as to essentially give SBC sole discretion to determine when and how to provide competitors with access to these capabilities of its equipment.

More importantly, SBC has offered no provisions for the remote testing of xDSL loops. Remote loop testing is necessary to identify and isolate service disruptions and to perform maintenance functions for xDSL services. Without a means to test loops remotely, competitors must send a technician to the RT (and SAI) in order to manually test each portion of the circuit. This process is time consuming and unnecessarily raises the cost of providing xDSL services to the public.

⁵ If SBC proposes to sell any facilities to unaffiliated third parties, it should specify all pertinent operational elements attendant to the sale and subsequent use of the facilities.

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As shown in the attached chart, SBC's proposed RT configuration could easily accommodate the necessary equipment to perform remote testing. SBC could accommodate remote testing by installing broadband loop testing equipment and an automated loop cross connect device. The broadband loop test equipment is commercially available from vendors such as Turnstone, Harris, TollGrade and Hekimian, and would enable competitors (or SBC, at competitors' request) to test the performance of a given loop. The automated loop cross connect equipment, which also is commercially available from these vendors, allows customers to be transferred to a known working loop for testing purposes. With this equipment installed, SBC's Alcatel Litespan 2000 RTs could accommodate up to 1538 working POTS lines and up to 672 xDSL lines, which remains within the estimates provided by SBC in this proceeding.

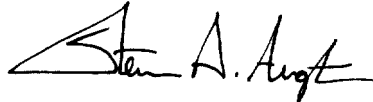
C. RT Collocation Issues

Jato continues to believe that SBC must not prejudge or impede the Commission's consideration of collocation obligations at remote terminals. Toward that end, Jato notes that SBC has offered no justification for limiting collocation in cabinets to less space (as a percentage of usable space) than will be reserved for huts and CEVs. (SBC Proposal at 4). Jato reiterates that the Commission should require, as a "rule of thumb" pending any further rulemaking action by the Commission,

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that SBC reserve 25% of the usable space for collocation, regardless of the type of RT to be deployed. In any event, SBC should explicitly be required to remove equipment, reallocate space, or expand available space in the event the Commission adopts different standards in an upcoming rulemaking proceeding.⁶

Sincerely,



Steven A. Augustino
Counsel for Jato Communications Corp.

SAA:pab

cc: Larry Strickling
Carol Matthey
Tony Dale
Dorothy Attwood
Jordan Goldstein
Sarah Whitesell
Kyle Dixon
Rebecca Beynon

⁶ Similarly, SBC's proposal to install adjacent cabinet structures should be subject to reform and/or true-up in the event the Commission mandates different procedures for constructing adjacent structures.

Remote Terminal With Remote Loop Testing

